No. 80-148

MAR 2 1981

ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JEFFREY RICHARD ROBBINS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI
to the Court of Appeal, State of California
First Appellate District

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 29, 1980
CERTIORARI GRANTED JANUARY 19, 1981

PROOF OF SERVICE BY MAIL

I am a citizen of the United States, over the age of 18 years, employed in the County of Marin, California, in which county the within mentioned mailing occurred, and not a party to the subject cause. My business address is Wood Island, Suite 207, 60 E. Sir Francis Drake Blvd., Larkspur, CA 94939. On March 5, 1981 I served the within Joint Appendix on the respondent to said action by placing three true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Larkspur, California, addressed as follows:

Attorney General of the State of California
Department of Justice
6000 State Building
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 1981, at Larkspur, California.



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OPINION BELOW:

The opinion of the Court of Appeal of the State of California, First Appellate District and the order of the Supreme Court of California on April 30, 1980, denying a petition for hearing, are reproduced in the appendix to the petition for writ of certiorari filed herein.

IN THE MUNICIPAL COURT OF

FAIRFIELD-SUISUN-VACAVILLE JUDICIAL DISTRICT

COUNTY OF SOLANO, STATE OF CALIFORNIA

Honorable CURTIS G. SINGLETON, Presiding

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. JEFFREY RICHARD ROBBINS, Defendant.	No. 10357 FILED FEB 6-1975 NEIL CRAWFORD, County Clerk By ROBERT KLEIN Deputy Clerk

REPORTER'S TRANSCRIPT OF
PRELIMINARY HEARING

TUESDAY, JANUARY 14th, 1975

-oOo-

APPEARANCES

For the People: ERIC R. ULDALL, Esq.
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I N D E X

PEOPLE'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
DEPUE, RONALD	3	15	24	=

PEOPLE'S EXHIBITS	DESCRIPTION	FOR IDENT.	IN EVIDENCE
No. 1	Evidence envelope	8	27
No. 1-A	Candy tin & contents	8	27
No. 2	Brown tote bag & contents	11	27
No. 2-A	Glass jar & contents	12	27
No. 2-B	White plastic bag & contents	13	27
No. 2-C	White plastic bag & contents	13	27
No. 2-D	White plastic bag & contents	13	27
No. 3	Plastic wrapped block	13	27
No. 4	Plastic wrapped block	13	27
No. 5	Chemist's report		25

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TUESDAY, JANUARY 14th, 1975

The Preliminary Hearing of the before-entitled matter came on regularly this day in the Municipal Court of the Fairfield-Suisun-Vacaville Judicial District, County of Solano, State of California, before Honorable CURTIS G. SINGLETON, presiding.

THE PEOPLE OF THE STATE OF CALIFORNIA were represented by ERIC R. ULDALL, Deputy District Attorney for the Solano County District Attorney's Office.

The defendant JEFFREY RICHARD ROBBINS was present and in attendance and was attended and represented by his counsel, WILLIAM ROSS, Esq.

JACQUELINE I. BRADLEY, Court Reporter pro tem, was present and action.

The following proceedings were had and taken, to wit:

P R O C E E D I N G S

THE COURT: I will call the matter of People of the State of California versus Jeffrey Richard Robbins.

MR. ULDALL: Ready for the People, your Honor.

MR. ROSS: Ready of the defense.

Mr. Robbins is Present.

MR. ULDALL: I would like to call Officer DePue to the stand.

RONALD DEPUE,

called as a witness on behalf of the People, was thereupon duly and regularly sworn to tell the truth, the whole truth and nothing but the truth and testified as follows, to wit:

[3] DIRECT EXAMINATION

BY MR. ULDALL:

Q. Would you state your name for the record, please?

A. Ronald DePue, D-e-P-u-e.

Q. And your occupation?

A. State Traffic Officer.

Q. And that is with the CHP?

A. Yes.

Q. How long have you been so employed?

A. Eight Years.

Q. And on January 5th of this year, were you assigned to the Vallejo office?

A. Yes, sir.

Q. And were you on duty at 1:45 in the morning?

A. Yes, sir.

Q. And can you tell us what your location was at that time, Officer DePue?

A. Eastbound on Interstate 80, just west of Lagoon Valley.

Q. You were on patrol at that time?

A. Yes.

Q. Is Nelson Road near Interstate 80 or in that area?

A. It runs parallel near Interstate 80, on the right side.

Q. And did a vehicle come to your

attention traveling eastbound on Nelson Road?

A. Yes, sir.

Q. Could you describe that vehicle, please?

A. It was a blue 1966 Chevy station wagon, four-door station wagon.

Q. And why did this vehicle come to your attention?

A. I observed that it was driving rather erratically as it was being operated eastbound on Nelson Road going into a curve just prior to the intersection at Lagoon Valley. It [4] went over the center line twice.

Q. How many lanes of traffic are there eastbound and westbound on Nelson Road?

A. One in each direction.

Q. You observed the vehicle left of the center line?

A. Yes.

Q. How far to the left?

A. Approximately the full vehicle width, the right side tire of the vehicle was still

on the line when it returned back to the lane just prior to stopping.

Q. What action did you take after making this initial observation?

A. We exited the freeway and came up next to the vehicle as it stopped on Lagoon Valley and Nelson Road, and the vehicle proceeded again across in front of us and we stopped the vehicle eastbound on Nelson Road, east of Lagoon Valley.

Q. When you say "we", are you referring to yourself and your partner, Sergeant Stoltz?

A. Yes, Sergeant Stoltz.

Q. Eastbound on Nelson Road, that is east of Lagoon Valley?

A. Yes.

Q. What transpired after the stop?

A. The defendant immediately exited his vehicle and approached the patrol vehicle.

Q. Were you the driver or the passenger in the patrol vehicle?

A. I was the passenger.

Q. Did you have contact with the driver of the station wagon at this point?

[5] A. I did meet him halfway between the two vehicles.

Q. Is that driver present here in court?

A. Yes, sir.

Q. And could you point him out and describe what he is wearing?

A. Blue denim jacket, brown hair.

Q. Is he seated to the right of Mr. Ross, here at the counsel table?

A. Yes.

MR. ULDALL: Could the record reflect that he has identified the defendant Jeffrey Richard Robbins?

THE COURT: Yes.

BY MR. ULDALL:

Q. Now, what transpired after you made your initial contact with Mr. Robbins?

A. He began talking, immediately upon

contact, very rapidly. And he started explaining that he had -- that he was looking for Highway 5. I then requested from him a driver's license. He removed his wallet and took his driver's license out.

Q. Did Mr. Robbins have any difficulty in removing the license from his wallet?

A. He passed over it twice and then removed it from the wallet and handed it to me.

Q. Was it a valid California license?

A. Yes, it was.

Q. After you had taken the license into your possession, what transpired after that?

A. I requested then his registration card for the vehicle.

Q. What did he do in responding to your request?

[6] A. He turned and returned to his vehicle. He opened the driver's backdoor and at that time retrieved a blue plastic folder. From that he took out his registration card.

Q. Where was this blue plastic folder which contained the registration card located?

A. I didn't see the location. It was behind him, to his right.

Q. How far away from Mr. Robbins and the vehicle were you when Mr. Robbins retrieved this registration card?

A. Approximately four feet.

Q. And was anything out of order that you observed, or anything that your senses detected as you reached for the card?

A. At that time I noted a very light odor and as I got closer I smelled the odor of burnt marijuana.

Q. As you got closer was the odor still a light odor?

A. No, it became very strong.

Q. Where was this odor coming from?

A. From the vehicle. It appeared to be very strong.

Q. Can you tell us whether or not at

the Highway Patrol Academy you received any training that would help you detect the odor of marijuana? A. Yes, sir.

Q. Part of the training that you received included a course to help you detect marijuana by odor? A. Yes, sir.

Q. And when was that course given?

A. I received the first course in 1968.

Q. And have you received similar courses subsequently at the CHP Academy?

A. Yes, twice.

Q. Could you describe how those courses were conducted?

[7] A. In all three cases there was burned approximately -- approximately one ounce of marijuana in a large strainer in the classroom and it was passed around the classroom so that everybody could smell it. The first time they had it hidden in the air vent of the classroom, at which time it was blown into the classroom, to find out if anybody recognized it.

Q. Was that odor similar to the odor that you smelled on the morning of January 5th? A. Yes, sir.

Q. Now, after you smelled the odor, what you believed to be burning marijuana, what action did you take?

A. I immediately placed the suspect in search position and patted him down for weapons.

Q. Were there any weapons found?

A. No.

Q. What happened after Mr. Robbins was patted down?

A. He remained in that position. I entered the vehicle at that time and began searching for contraband.

Q. Could you describe how the search proceeded, please?

A. I began searching from the driver's side. There was located a pair of surgical type scissors. Also on the other side was a hand-rolled burnt cigarette. There was

also a hand-rolled cigarette just under the left-hand side of the front seat and --

Q. And the cigarette, had it been smoked at all?

A. No, it hadn't. Also I located a tin, a fruitcake type tin on the left rear right rear floorboard of the back seat.

Q. Okay. And that fruitcake tin, what did you locate there?

A. I opened it and found it full of vegetable seeds that I believed to be marijuana seeds.

[8] Q. Was there anything else in that tin?

A Yeah. I believe there was a baggie with a flower top type plant, a marijuana plant.

MR. ULDALL: I have here an envelope and contents, which I would like to be marked People's 1 for identification.

THE COURT: All right. Counsel shall be shown that.

MR. ULDALL: I would like to see it

again, Bill.

(Thereupon, an envelope and its contents were marked People's Exhibit No. 1 for identification.)

BY MR. ULDALL:

Q. Officer DePue, I would like to show you People's 1 for identification and ask you if you have seen that envelope before?

A. No, I haven't.

Q. Okay. And is there anything you recognize about the envelope or the cover of it? A. No.

Q. Okay. Was --

A. This was processed by Drug Abuse, not me.

Q. Could you open the envelope at this time? Also, state for the record when the envelope is open.

A. It is now open.

Q. Would you please withdraw the contents of it.

MR. ULDALL: I would like to have the tin marked 1-A.

THE COURT: All right.

(Thereupon, the cake tin was marked People's Exhibit No. 1-A for identification.)

MR. ULDALL: I will show it to Mr. Ross at this time. This would be the tin and its contents.

BY MR. ULDALL: Q. Officer DePue, I would like to show you [9] what appears to be a candy tin, People's 1-A for identification. Have you seen that exhibit before, please?

A. Yes, I have.

Q. Where?

A. This is the tin that I located in the right rear floorboard of the vehicle.

Q. Are there any identification marks on that tin?

A. Yes. I placed a piece of tape over the top and it has my initials and badge number and date.

Q. Would you open the tin at this time and state for the record when it is opened, please?

A. It is now opened.

Q. Is there anything in the tin?

A. Yes.

Q. And what is in the tin?

A. What appears to be on the tin, it was sealed by me.

Q. How could you tell it was sealed by you?

A. I sealed it all the way around it and put my badge number and initials on it, "R.M. DePue, #6032".

Q. Is there anything else in the tin?

A. Yes. The roach that I located on the floor, and also it is initialed by me. Same initials and number. No, just the initials. There are two packs of paper.

Q. Those are cigarette papers?

A. Yes, both initialed by me.

Q. Those in the tin -- they were in the tin that night?

A. Yes. There is an electrical clip in the can and a can of seeds and two

surgical-type scissors.

[10] Q. Are there any seeds in the tin?

A. Yes, quite a few.

Q. Okay --

A. Also it has a roach in it.

Q. And was the baggie in the tin that night when you found it?

A. Yes.

Q. What about the seeds, were they in the tin that night? The only thing in there now that wasn't before is the handrolled cigarette and two tweezer-type items; is that correct?

A. That's correct.

Q. After finding this tin, Officer DePue, which is marked People's 1-A for identification, did you search further in the vehicle?

A. After finding the tin, the subject became ill.

Q. So what action did you take after finding the tin?

A. The subject had evidently come to a sitting position in the center of the roadway, after vomiting several times. He was helped up and taken around back of the vehicle at the left-hand, near the right rear of his vehicle, and I went back to the vehicle and continued the search.

Q. Where was Sergeant Stoltz while this was happening?

A. Near the defendant at all times.

Q. When you resumed the search, could you tell the Court how that proceeded, please?

A. I continued to go into the search, at which time Sergeant Stoltz called me and I went back to the subject at that time. He became irrational and he was wild-eyed looking and he [11] made some statement to Sergeant Stoltz and he indicated that he was becoming a little scared. He was in handcuffs at that time.

Q. After Mr. Robbins was handcuffed,

what transpired?

A. I went back to the vehicle.

Q. What happened then?

A. He called me back again, Sergeant Stoltz, at that time. He related to me that the subject had stated that what we were looking for was in the rear -- under the rear of the vehicle.

Q. What action did you take after you possessed this knowledge?

A. We opened the tailgate and lifted the rear compartment of the vehicle up.

Q. What did you observe?

A. We observed a brown tote bag, leather-type. The bag brown, was a brief-case type bag.

Q. MR. ULDALL: I have here a brown tote bag that I would like marked People's No. 2 for identification.

THE COURT: So marked.

(Thereupon a brown tote bag and its contents were marked People's Exhibit No. 2 for identification.)

BY MR. ULDALL:

Q. Officer DePue, I would like to hand you the brown leather bag, People's 2 for identification. I would like to ask you if you can identify this -- have you seen this before, please?

A. Yes, I have.

Q. And where have you seen that?

A. I found it in the luggage compartment of the vehicle.

[12] Q. Does it have your initials or any identification marks?

A. It has my initials and badge number.

Q. Would you open the bag at this time, please?

A. The bag is open.

Q. And this bag was opened by you on the morning of January 5th at the scene; is that correct? A. Yes, sir.

Q. Would you look in the bag at this time? A. Yes, sir.

Q. And is there something in the bag?

A. Yes, sir.

Q. Could you tell the Court what those items are in the bag, please.

A. One candy-type jar containing a flower top marijuana plant.

Q. How could you indentify that?

A. This was identified by me by my badge number and initials.

Q. Okay.

MR. ULDALL: Have them marked People's 2-A for identification.

THE COURT: Yes.

(Thereupon, the contents of People's No. 2 were marked People's No. 2-A for identification.)

BY MR. ULDALL:

Q. Was there anything else in that bag, Officer DePue?

A. Three white plastic bags, approximately weighing one pound each.

MR. ULDALL: Why don't we have those marked at this time, 2-B, C and D.

[13] THE COURT: All right.

(Thereupon, three plastic bags and their contents were marked People's Exhibits No. 2-B, 2-C and 2-D for identification.)

BY MR. ULDALL:

Q. I would like to hand you back the three white plastic bags, Officer, marked People's 2-B, C and D for identification. Those three bags were contained in People's 2 on the morning of January 5th?

A. Yes, they were.

Q. Whereabouts was People's 2-A, the jar with the flower --

A. Also in the bag.

Q. The bag and contents were in your custody? A. Yes, sir.

Q. Were they later turned over to some other individual?

A. They were later turned over to the Drug Abuse.

Q. Fine. And did you keep on searching after you found this brown tote bag,

Officer DePue?

A. Yes, I did. I removed -- I removed a briefcase-type bag and it contained only clothing.

Q. Was there anything else in the luggage area?

A. I removed two green wrapped plastic blocks.

MR. ULDALL: Okay. Would you take a look at these, Bill? I would like to have these marked People's 3 and 4 for identification.

THE COURT: Yes.

(Thereupon, two green plastic wrapped blocks were marked People's No. 3 and 4 for identification.)

BY MR. ULDALL:

Q. Officer, I would like to hand you the blocks of some [14] type of material wrapped in green plastic, marked People's No. 3 and 4 for identification, and ask you: Have you seen those before, please?

A. Yes, I have.

Q. How do you know?

A. I have placed my initials, my badge number on it.

Q. And whereabouts was that found?

A. This particular item was on the left side of the luggage compartment.

Q. Okay. Then that was taken into your custody; is that correct?

A. Yes.

Q. And later given to somebody else?

A. Yes.

Q. Again, that is Inspector Grundy?

A. Yes, sir.

Q. And People's No. 4 for identification, take a look at that please?

A. This is also marked by me, "R.M.D. #6032".

Q. Where have you seen that item before?

A. On the right side of the luggage compartment.

Q. That was also taken into your

custody. A. Yes, sir.

Q. And it later was turned over to Inspector Grundy? A. Yes, sir.

Q. Now, Officer DePue, this area where you observed this Chevrolet station wagon being operated and where it was stopped, that was in Solano County, California?

A. Yes, sir, it was.

MR. ULDALL: That is all I have, your Honor.

THE COURT: Cross-examination?

[15] MR. ROSS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. ROSS:

Q. Officer DePue, where did you first observe the defendant's vehicle?

A. The vehicle was eastbound on Nelson Road, approximately a quarter of a mile from Lagoon Valley.

Q. I believe you stated that it was the erratic driving that first brought the vehicle to your attention?

A. Yes, Sir.

Q. Would you please describe the erratic driving?

A. It was operated on the wrong side of the road about 30 miles an hour in a 55 mile an hour zone.

Q. Was there any other indication, other than those that you mentioned?

A. No.

Q. Would you please describe the driving conditions on that evening?

A. It was light fog in the area, very cool. The road was dry.

Q. Was the roadway lighted there?

A. No, sir.

Q. And it had been foggy all that evening; do you recall?

A. I would say from about 9:00 p.m.

Q. So the fog had come earlier in the previous evening, actually?

A. I don't understand?

Q. In other words, the foggy conditions

started, I guess, the 4th of January?

A. That's correct.

[16] Q. What would you estimate the visibility was on the roadway?

A. I'd estimate the visibility was approximately a quarter of a mile.

Q. Were the defendant's headlights on?

A. Yes, they were.

Q. Now, was it because of his erratic driving that you pulled the defendant over?

A. Yes, sir.

Q. How did you pull him over?

A. His vehicle was illuminated by our red and blue spot lights.

Q. Was the siren activated?

A. No, sir.

Q. Just the lights?

A Yes, sir.

Q. Now, about how long after you activated the light, in time, did the defendant pull over?

A. Three, four seconds.

Q. Substantially immediately, then?

A. Yes.

Q. Would you describe how he pulled off the road, please?

A. That particular area has no shoulder. He just pulled over to the right side of the traffic lane and stopped.

Q. There is no shoulder. Would you describe the side of the road, then?

A. In that particular area it is, I believe, marsh type grass growing on the right side of the roadway there.

Q. Then it would not be unexpected to pull off the roadway?

A. No. You get your vehicle stopped.

Q. I see. Now, approximately how soon after the stopping -- [17] or, excuse me, Officer DePue, where was your vehicle in relation to the defendant's?

A. Directly behind the defendant's vehicle.

Q. Were your lights still on?

A. All lights were activated then.

Q. And did the defendant get out of his vehicle then?

A. Immediately, yes.

Q. Did you notice whether his engine was still running?

A. Yes, it was.

Q. Were his lights on?

A. Yes, sir.

Q. Now, then, did you notice anything unusual about his demeanor at that time?

A. He was swallowing and perspiring and he had bloodshot, watery eyes also, at that time.

Q. Now, was it at this point that you asked for his driver's license?

A. Yes, sir.

Q. Where approximately was the defendant standing at that time?

A. He was standing approximately four feet, maybe five feet in front of the patrol vehicle, about halfway between the two

vehicles.

Q. How far was your vehicle behind the defendant's?

A. I'd estimate at least eight to ten feet.

Q. Now, at what point did you ask for the vehicle registration?

A. Right after I received the driver's license.

Q. Did you review the driver's license first? Did you examine it?

[18] A. I determined it was valid.

Q. I see. You determined it was valid? A. Yes.

Q. If I understand you, at that point you asked for his vehicle registration?

A. Yes, sir.

Q. Did he reply or respond?

A. He just went to get it at that time. I don't recall any response verbally.

Q. I see. When he went did you follow?

A. Yes.

Q. How closely were you following?

A. Two to three feet to his rear.

Q. Which side did he enter his vehicle?

A. From the driver's door.

Q. Did he locate his registration at that time? A. Yes, sir.

Q. About how long did it take him, would you say?

A. No time. He reached right in and brought it out.

Q. And at this point you smelled marijuana?

A. Initially; yes, sir.

Q. Did you place the defendant under arrest at that time?

A. I immediately took the defendant and pulled him around, told him to put his hands on the top of the car, and searched him at that time.

Q. I see. What did you do next, Officer?

A. He stood there while I was looking

in the vehicle. The next thing I observed was that I felt the vehicle move or shaking and I then observed him turn and fall to his knees outside and [19] he began to vomit.

Q. Was he placed up against the car when he fell and vomited?

A. He was at the left rear door.

Q. Was the engine still running at that time? A. Yes, it was.

Q. Now, would you describe at what point you entered the vehicle, what point in time?

A. After the pat search of the defendant.

Q. How long was that?

A. Within seconds, two seconds.

Q. What did you first observe upon entering the vehicle?

A. My first observation would be the surgical tweezers located on the seat.

Q. Which side of the vehicle did you

enter from?

A. The driver's position.

Q. Where did you observe the tweezers?

A. On the front seat, just to the right side of the center.

Q. Were they on the seat then?

A. Yes.

Q. I take it at that point you pursued your search then?

A. I noted the extremely strong odor of marijuana and I entered the vehicle.

Q. Did you notice anything unusual about those tweezers when you first saw them? A. No.

Q. Now, what -- where did you next search?

A. I looked over my left shoulder onto the dashboard of the vehicle and I observed a second set of tweezers.

Q. Were those the same type of tweezers that you found on [20] the seat?

A. Yes, sir.

Q. Did you notice anything unusual about the tweezers on the dash?

A. Yes. They had a burnt hand-rolled cigarette still attached.

Q. Did you have a flashlight with you at that time? A. Yes, sir.

Q. You continued the search with the aid of a flashlight, I take it?

A. Plus I had the spot -- the white spotlight of the patrol vehicle directed into the vehicle.

Q. Then you had plenty of light?

A. Yes, sir.

Q. Where did you next -- what else did you find then?

A. I then located the tin, at the right rear on the floor.

Q. Was this from the front seat?

A. I looked over in the back.

Q. Did you open the tin at this time?

A. Yes, I did.

Q. With regard to the tin, I was a

little confused in your prior testimony. What all did you find in the tin at the time when you opened it?

A. I opened the tin, at that time I located a large quantity of seeds, plastic baggie and cigarette papers; that was it.

Q. Now, at what point did the defendant become irrational, with regard to your search procedure?

A. It was related to me, as I was in the vehicle. I went outside, that is when it took place.

Q. Uh-huh?

[21] A. We both, my partner and myself, took him to the back of the vehicle; at which time I went back to the vehicle after that and he was continuing perspiring heavily. He began to say things that were irrational, like, "Is there any way out of this?" Anything else, I have no knowledge.

Q. Then you have no knowledge, then?

A. Of any irrational acts.

Q. After finding the tin is that when you went to the luggage compartment?

A. No, sir.

Q. What occurred in between?

A. I was called back out of the vehicle to handcuff the subject.

Q. Was he placed under arrest at that time? A. How do you mean?

Q. Had he been placed under arrest?

A. Well, had he been told that he was under arrest?

Q. Well, that, yes. Had he been told?

A. No.

Q. And you had it in your own mind that you had placed him under arrest?

A. Definitely.

Q. After going out of the vehicle, you handcuffed the defendant, did you again enter the vehicle? A. Yes.

Q. Which portion of the vehicle did you enter into?

A. Into the driver's position once

again.

Q. Was there anything additional?

A. As I entered the vehicle on the second time, I noted a [22] cigarette -- hand-rolled cigarette lying on the floor just to the left side of the seat where the adjustment is made.

A. How many times did you enter the vehicle? How many separate times did you enter the vehicle? A. Three.

Q. Does this include the luggage compartment? A. No.

Q. Three times into the front portion?

A. Yes.

Q. After finding the cigarette, is this when you went to the rear compartment?

A. No. I was once again called back to the vehicle by Sergeant Stoltz. He then told me then that the subject had stated that what we were looking for was under the rear.

Q. At that point is when you went into

the rear? A. Yes.

Q. Now, would you describe the luggage compartment, please?

A. It is under the floor in the rear deck of the station wagon. Then there is a handle set flush into the deck itself. I pulled it up and it opened to the front of the vehicle, from the rear to the front. The compartment itself was very dirty and was full of the size of the articles in it.

Q. Was the compartment open or closed, initially?

A. It was closed flush with the floorboard.

Q. Was anything else in the back compartment or on the floor, I guess it is called?

A. Yes, sir, there was.

Q. What was lying on top of the deck?

A. There was a rug, a rug remnant, lying loose on the deck, [23] and miscel-

laneous papers.

Q. Any of these miscellaneous articles on top of the baggage compartment?

A. Yes.

Q. You opened it with that on it?

A. I opened it freely with those on it. They slid off.

Q. Immediately after lifting up that luggage compartment door, what did you see at that point?

A. The first thing I saw was the brown tote bag, briefcase type bag.

Q. Anything else about the brown tote bag? A. No.

Q. Could you see anything else before you removed the articles in the compartment?

A. Yes. you could see the two green blocks on the sides of the compartment.

Q. Could you see anything else without moving the articles?

A. You could actually see the bottom of the vehicle between the two green bags.

Q. Could you observe anything else? For instance, tire iron or anything of that type? A. No.

Q. Excuse me. Could you see the briefcase that contained the clothing?

A. Yes. That was one of the first objects seen.

Q. Where was that in relation to the green bags and the tote bag?

A. In front of the bag, alongside of the tote bag.

Q. Did you say that it was not stacked on top of each other, [24] but lying side by side; is that correct?

A. Which?

Q. All the articles?

A. Yes. They were all spread out within the area.

Q. Then I take it at this point you started taking the articles out of the luggage compartment? A. Yes.

Q. Did you open all the articles at

that time? A. Yes, I did.

MR. ROSS: I have no further questions at this time.

REDIRECT EXAMINATION

BY MR. ULDALL:

Q. Was Mr. Robbins alone in the vehicle when it was stopped?

A. Yes, he was.

Q. And just one further question: You stated in response to Mr. Ross' question, when you first saw this brown tote bag there was nothing unusual about it; nothing about these two plastic wrapped green blocks that attracted your attention?

A. I had previous knowledge of transportation of such blocks. Normally contraband is wrapped this way, merely hearsay. I had never seen them before.

Q. You had heard contraband was packaged that way? A. Yes.

MR. ROSS: I have nothing further.

MR. ULDALL: At this time I believe

Mr. Ross has a couple of stipulations.

The first one would be that Inspector Grundy of the Drug Abuse Bureau, if called to testify -- or, that Mr. Menke [25] of Valley Toxicology serve were called to the stand, he would testify that the hand-rolled cigarette contained in People's 1-A for identification would be 490 milligrams of marijuana. He would also testify that approximately 12.7 grams of marijuana seeds and stems in that People's 1-A is 3.8 grams of marijuana. He would further testify that two bricks marked People's 3 and 4 for identification, each contain fifteen and three-quarter pounds of marijuana, gross weight. He would further testify that three white plastic bags contained in People's No. 2, that would be the tote bag, contain 474.2 grams of marijuana, 445.3 grams and 475.3 grams of marijuana, respectively. The fruit glass jar, People's 2-A marked for

identification would have 54.7 grams of marijuana. That covers the stipulation as to the chemist's report.

As for Inspector Grundy, if he were called to testify he would testify that in his expertise as a Drug Abuse agent that this amount of marijuana would be possessed by an individual for the purpose of sale.

I would like to have the chemist's report marked as People's No. 5 in evidence.

I previously supplied Mr. Ross with a copy, and I would offer at this time People's 1, 1-A, 2, 2-A, 2-B, 2-C and 2-D marked for identification, into evidence.

I would further move to dismiss the charge of A 364, which is Count IV as to the Complaint, that these tweezers never have been analyzed to see whether they contain any marijuana residue.

MR. ROSS: Yes, your Honor. First of all, Mr. Uldall [26] correctly stated our stipulation for the purpose of the pre-

liminary hearing.

Secondly, we would enter an objection at this time to the introduction of all evidence and all tangible evidence; that would be also the evidence in Count IV, which is dismissed.

THE COURT: I haven't dismissed it yet. The motion has been made.

MR. ROSS: I would object to all the articles taken from the rear compartment of the station wagon being introduced into evidence.

THE COURT: All right. Do you wish to be heard?

MR. ULDALL: I would like to submit that I think the law is rather clear on this point.

MR. ROSS: I would like to submit to the Court that the law in this area -- I am having a little trouble. The articles were taken from the compartment with regard to probable cause for search. The compart-

ment, your Honor, if I might ask -- your stipulation at this time. I notice that we didn't ask in the testimony, it was sort of obvious, a stipulation that this wasn't a warranted search. It was a search without a warrant.

MR. ULDALL: One further thing. To clear up any further problems in Superior Court, I move to reopen and call Sergeant Stoltz for a couple of questions.

THE COURT: Well, I don't really care what he is going to testify. If there is anything in the case as far as the question of search is concerned -- you may step down.

Let me state the Court's position first. In the first place, counsel's objection will be reserved. I think that there [27] was reasonable cause to enter the car and search, first of all, because of the smell. Also, the defendant's voluntary statement that what they were looking

for could be found in the compartment is reasonable cause to search for contraband.

All items will be received into evidence.

MR. ROSS: Very well, your Honor.

THE COURT: The matter is otherwise submitted?

MR. ULDALL: Yes.

THE COURT: I find that there is reasonable cause to believe that the offenses charged were committed by the defendant.

The motion that the fourth count be dismissed is granted.

The other counts, I feel there is reasonable cause for belief that the offenses have been committed by this defendant and he is held to answer to the charges in Superior Court.

The matter will be continued until the 29th of January at 9:00 o'clock.

MR. ROSS: Your Honor, I might have a problem. I have a trial beginning in Redwood City, it is the 27th. I estimate it will be a four or five-day trial.

THE COURT: Well, if the defendant has no objection to waiving time, we could set it over for the first week in February.

MR. ROSS: Your Honor, in February I have a civil trial in Lake County. I estimate that will be a week and a half to two weeks.

THE COURT: This is just for first appearance.

You can go to Superior Court and --

[28] MR. ULDALL: Sometime maybe before the trial in Redwood City?

THE COURT: How about the 27th?

MR. ULDALL: How about the previous Friday, the 24th?

THE COURT: All right. That only gives you approximately ten days to get the information.

The 24th of January at 9:00 o'clock, Department 3 in Superior Court.

The exhibits are ordered returned to the Drug Abuse or someone else. I don't want it here in court.

MR. ULDALL: Is that in Department 3?

THE COURT: Department 3.

MR. ULDALL: Could we get a stipulation that all the exhibits be returned to Officer DePue of the CHP and then to the evidence locker?

MR. ROSS: So stipulated.

THE COURT: So ordered. We will recess briefly.

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IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

HONORABLE ELLIS R. RANDALL, Presiding

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. JEFFREY RICHARD ROBBINS, Defendant.	No. 10357 FILED APR 17 1975 NEIL CRAWFORD, County Clerk By DIANE GARLAND Deputy Clerk

---oOo---

REPORTER'S TRANSCRIPT OF 1538.5 MOTION

MONDAY, MARCH 24, 1975

---oOo---

A P P E A R A N C E S

For the People: ERIC R. ULDALL, ESQ.
Deputy District Attorney
Solano County Hall of Justice
Fairfield, CA 94533

For the Defendant: WILLIAM ROSS, ESQ.
348 29th Avenue
San Francisco, CA 94121

---oOo---

I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT
RONALD DePUE			
By Mr. Ross		3	
By Mr. Uldall	21		
RICHARD STOLTZ			
By Mr. Ross	22		25
By Mr. Uldall		25	

IN THE SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SOLANO

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- JEFFREY RICHARD ROBBINS, Defendant.	NO. 10357

---oOo---

MONDAY, MARCH 24, 1975

---oOo---

The above- entitled matter came on this date before Honorable ELLIS R. RANDALL, Judge Presiding in the Superior Court of the State of California, in and for the County of Solano.

The People were represented by ERIC R. ULDALL, ESQ., Deputy District Attorney of the County of Solano, State of California.

The Defendant JEFFREY RICHARD ROBBINS was personally present and in attendance upon the Court, and he was attended and represented by his counsel, WILLIAM ROSS, ESQ.

JAMES O. CLAYTON, Official Shorthand Reporter, was present and acting.

The following proceedings were had and taken, to wit:

P R O C E E D I N G S

THE COURT: The People versus Jeffrey Robbins. All right.

[3] MR. ROSS: Good afternoon, Your Honor.

THE COURT: Glad to have you with us.

MR. ULDALL: This matter comes on this afternoon for a hearing under Penal Code Section 1538.5. In order to expedite matters, we have stipulated the People's case may be presented upon the testimony taken at the preliminary hearing. Officer

DePue, the arresting officer, is present. He will then be called to the stand for further cross-examination by Mr. Ross.

THE COURT: All right.

MR. ULDALL: Officer DePue.

MR. ROSS: That is correct.

THE COURT: All right.

MR. ROSS: The purpose of our proceeding today would be merely to supplement the testimony already entered.

THE COURT: All right.

RONALD DePUE,

having first been duly and regularly sworn to tell the truth, the whole truth and nothing but the truth, testified further as follows, to wit;

CROSS-EXAMINATION

MR. ROSS: May I proceed?

THE COURT: By all means.

MR. ROSS: Thank you.

BY MR. ROSS:

Q Good afternoon.

THE COURT: Under cross-examination?

MR. ROSS: Yes, that is correct.

MR. ULDALL: Correct.

[4] MR. ROSS: Before we begin here, is the Court looking at this in the state of supplemental testimony or cross-examination? It may make a difference. I would ask the Court to consider it supplemental testimony, so we will not be limited by the scope of the preliminary hearing.

MR. ULDALL: Fine, agreed.

THE COURT: Supplemental testimony.

MR. ROSS: Thank you, Your Honor. I am not used to a microphone. Am I picking up?

THE COURT: You are doing fine. I am a little hard of hearing. I need all the help I can get.

MR. ROSS: Very well, Your Honor.

BY MR. ROSS:

Q Good afternoon, Officer DePue.

A Mr. Ross.

Q Drawing your attention to the evening hours of January 5th, 1975, was it on this evening that you took the defendant seated next to me into custody?

A Yes, in the morning hours of that day.

Q About what time?

A Approximately 1:45 a.m.

Q Now, what was your purpose in stopping the defendant?

A I observed erratic driving.

Q When you say "erratic driving," please explain.

A I observed the subject operating his vehicle at the left center line of the roadway.

Q Where were you located at that time, Officer?

A I was eastbound on Interstate 80 approaching Lagoon Valley.

[5] Q Where was the defendant's vehicle

located?

A Vehicle was eastbound on Nelson Road parallel to Interstate 80.

Q When you first observed the defendant's vehicle, approximately how far away from him were you?

A I was parallel to his vehicle at that time, approximately five or six hundred feet.

THE COURT: Let me interrupt a minute. Is Nelson Road -- is that where the new Remark Restaurant is?

THE WITNESS: It's the road -- frontage road to the freeway just north of Howard Johnson's from North Texas.

THE COURT: All right.

THE WITNESS: On the right side, going east.

THE COURT: Completely open parcel for about a mile or more.

THE WITNESS: Yes, Your Honor.

THE COURT: All right. I know

where it is.

BY MR. ROSS:

Q How long did you remain on Interstate 80 before pursuing the defendant's vehicle?

A We exited from Interstate 80 at the off ramp parallel with his vehicle at that time keeping him in sight. We then approached perpendicular to his direction of travel on Lagoon Valley Road and where he brought his vehicle to a stop first.

Q Was the defendant's vehicle in visual -- did you have visual contact with the defendant's vehicle at all times?

A Yes, I watched his vehicle the entire time.

Q Now, what was the first -- what was your first observation [6] with regard to the erratic driving?

A First noted that he was traveling at a slow rate of speed in a 55 mile per hour zone. I estimated about 30 hours [sic] an hour.

Q Was this while you were still on 80?

A Yes. I watched the vehicle travel to the left of this center line, approximately full width of the vehicle, until his right tires were at the center line while approaching the first curve prior to the stop sign.

Q Was this the only indication of erratic driving that you had at that time?

A Yes.

Q Were there other indications later?

A Yes. After regaining the vehicle -- bringing the vehicle back on its own side of the roadway, he drifted out again after that. This would be in -- just prior to the second portion of the S curve.

Q You were still on Interstate 80?

A No, I believe we were on the off ramp.

Q At the time the vehicle drifted the second time? A Yes.

Q What did you do then?

A We were still exiting the freeway at that time and we aproached his vehicle on Lagoon Valley as it came to a stop northbound, Nelson Road.

Q Did you stop the vehicle?

A No.

Q Now, after you observed the vehicle stop, I take it at that time you pulled in behind the vehicle?

[7] A No. He then crossed Lagoon Valley Road and continued northbound -- or east-bound on Nelson Road.

Q Did you follow it at that time?

A Yes, from that point.

Q How long, Officer, did you follow it?

A In time or distance?

Q Both.

A OK. We followed it around the first curve. As you leave Lagoon Valley Road, it would be approximately, I would say, just short of a quarter of a mile.

Q How long in time would you say that

was?

A Oh, I would say maybe seven, eight seconds, around like that. It was well under a quarter of a mile, around that.

Q What was your purpose for stopping the vehicle?

A To determine why it had left -- was operating outside of a marked road lane.

Q Now, at that time would you please describe how you stopped the vehicle?

A We turned on the light bar on the patrol unit, which was a red and blue light, and we activated the white spotlight to the front. The subject vehicle pulled over.

Q Did the defendant's vehicle pull over immediately?

A Essentially, yes.

Q Before I forget, the second time that the defendant's vehicle drifted across the center line, how far did it drift on that occasion?

A I would say approximately three feet.

Q. So that -- it was not as big of a drift as the first time?

[8] A That is right.

Q There were no other indications of erratic driving other than the drift?

A And the slow speed.

Q And the slow speed. Did you exit your vehicle upon stopping defendant vehicle.? A Yes, I did.

Q Did the defendant exit his vehicle?

A Yes, he did.

Q Would you please explain what transpired?

A Upon the stop, the defendant left the vehicle immediately, came walking back to the patrol car. I met him approximately half way between the two cars.

Q Did you determine at that time the reason for defendant's erratic driving and slow speed, comparatively slow speed?

A Not at that time, no.

Q Officer, at that time did you pursue questioning of the defendant?

A I asked the defendant at that time for his driver's license.

Q Did he produce the license?

A Yes, he did.

Q Did it appear to be a valid license?

A Yes, it did.

Q What did you do then?

A I then asked him for the registration for the vehicle.

Q Did he produce that?

A Yes, he did.

[9] Q Now, at the time that you met defendant midway between your vehicles, was it your intention to make an arrest of the defendant? A At that time?

Q At that time? A No.

Q Was this more or less a routine check, then?

A No, it was -- I was trying to determine why he had left the marked roadway.

Q Did defendant ever state a reason to you why?

A He left the roadway at that time?

Q Yes.

A I recall him stating that he was lost and that he was trying to find out where he was. I don't recall any specific reference to the movement.

Q Now, what did you arrest defendant for initially?

A Driving while under the influence of marijuana.

Q And what was that arrest based upon?

A Based upon his agility and demeanor at the time and upon the strong odor of burned marijuana within his vehicle, and the observation of rejected refuse from -- when he vomited on the roadway.

Q Officer, were there any overhead lights on that segment of the roadway?

A No, no.

Q Would you please describe the weather?

A The weather was foggy and very cold.

Q You say you smelled -- when did you smell the burned [10] marijuana?

A I first noticed it when he entered his vehicle to obtain a registration card.

Q Where were you positioned at that time?

A I was positioned directly behind him, approximately three feet, four feet.

Q Were you accompanied by anyone that evening?

A Yes, I was.

Q Who was that?

A Sgt. Stoltz.

Q Now, when you approached the car, where was Sgt. Stoltz at that time?

A As we walked up to the car, or --

Q Yes.

A I believe he was at that time on the right side of the subject's vehicle.

Q You were on the left?

A Yes.

Q Now, at what instance did you first detect the odor of marijuana?

A My first indication of it was after the door was opened.

Q What did you do at that time?

A I took the subject's registration card, which he handed me, and then placed him in a search position at that position of the vehicle.

Q Did you conduct a search of the defendant?

A I gave a pat search to the defendant.

Q A weapon search?

[11] A Yes.

Q Were any weapons found?

A No. The only thing discovered at that time was a vial of liquid, hard vial of liquid.

Q Please describe that vial?

A A clear glass jar of -- with a black top.

Q Did you have occasion to examine

that vial?

A Yes, I took it -- I didn't know what it was when I took it in possession.

Q Did you ever determine what was in that vial?

A No, sir, I didn't.

Q Did you have occasion to smell it?

A Yes, I did.

Q Could you describe the smell, please, for us?

A Repugnant.

Q Very descriptive.

THE COURT: Repugnant?

THE WITNESS: Repugnant.

THE COURT: Oh, repugnant.

THE WITNESS: Yes, it was a very rotten smelling vial.

BY MR. ROSS:

Q What procedure did you begin at that time?

A I then entered the subject's vehicle to look for contraband.

Q Did you find anything else other than the vial on the pat down?

A Not that I recall.

Q Is it at this point that you entered the vehicle? A Yes.

[12] Q And what did you -- would you describe your procedure at that point?

A I entered the vehicle at the driver's door and I observed a pair of surgical type of tweezers laying on the seat.

Q Did you observe anything else at that point?

A At that point I removed -- I picked the tweezers up. I was looking into the vehicle. I observed another set of tweezers on the dashboard, and at that time I left the vehicle again.

Q Did you have occasion to ask defendant the purpose of the tweezers?

A No, I don't recall.

Q Was there anything unusual about the tweezers? A No.

MR. ULDALL: Excuse me. Which pair of tweezers are you referring to?

MR. ROSS: The paid that the officer found on the seat.

MR. ULDALL: On the seat. OK.

BY MR. ROSS:

Q Did you continue your search at that point?

A Yeah. I observed -- I hadn't picked up, other than the first pair of tweezers and at that point then I felt the vehicle move while I was in it and I exited.

Q Did you determine what caused the movement?

A Yes, the subject was becoming ill.

Q Now, did you have any discussion with the defendant at this point?

A I didn't. My Sergeant did.

[13] Q Did you ever determine why defendant became ill at that point?

A No, I didn't.

Q Did anyone, to the best of your knowl-

edge?

A We asked -- I believe the Sergeant asked him if he had taken anything that would be detrimental to his life?

Q Did you hear a response?

A At that point?

Q Yes.

A Yes.

Q What was the response?

A He was complaining about the fact that his car was running and the gas was making him sick.

Q Where was the defendant positioned at that time?

A Upon his response?

Q Yes.

A He was seated in the middle of the roadway.

Q Where was he immediately before?

A Alongside of his vehicle at the -- just at the edge of the left rear -- rear door.

Q Would that be the exhaust side of the vehicle?

A No, the rear is the exhaust of the vehicle.

Q Of your own recollection, do you recall which side in the rear of the vehicle the exhause pipe is on?

A I have no recollection.

Q Would it refresh your recollection if you were told that it was on the left side? A No.

[14] Q Now, did you find anything else in the front seat area besides the pair of tweezers?

A In that area I located a hand-rolled cigarette on the floor at the left edge of the front seat.

Q When you say "left hand" --

A On the floor by the seat adjustment location.

Q And was there anything else found?

A Another set of surgical tweezers

with a burned hand-rolled type of cigarette still clamped in them and an electric type alligator jaw clamp was located on the stereo speaker, on the controls.

Q What was the defendant's demeanor at that point?

A Well, after -- after defendant had become sick, we moved him to the right rear of his car and I had gone back to his vehicle. He was perspiring profusely, obvious all over his face. He was swallowing rapidly. He had a rather "I don't care" attitude to him, euphoria sort of state.

Q Did you re-enter the car at any time after having moved the defendant?

A Yes, after having moved the defendant, I did re-enter the vehicle.

Q What had you found up to this point before re-entering?

A I believe prior to re-entering the vehicle, I found the tweezers.

Q Both pair?

A Yes, both pair were observed, I believe. I only picked up one pair prior to the second entry. I observed the second pair. I hadn't pulled them away yet.

[15] Q And the hand-rolled cigarette was before the second entry?

A See what point I handcuffed him. I believe I observed the hand-rolled cigarette after returning from handcuffing.

Q Would this be on the second entry then?

A No, the subject was placed back to the rear of the vehicle for his own safety just prior to the second entry.

Q Was he handcuffed at that time?

A No, he wasn't.

Q He was not yet handcuffed?

A No.

Q When was he handcuffed?

A After I had entered the vehicle the second time and located more of the contra-

band, I was called back out by the Sergeant and stating that for both our safety, it would be a good idea to handcuff him at that time due to the fact he was becoming scared and he was getting a rather wild look on his face at that time.

Q When you say "wild look," please --

A Eyes very wild. He looked frightened.

Q A frightened look?

A. Yes.

Q Did defendant state why he was becoming frightened?

A He stated he didn't want to take a fall for this.

Q For this?

A That was it.

Q Now, when you re-entered the second time, would you please describe your procedure?

A I re-entered the vehicle after handcuffing him and was [16] looking through the vehicle at that time when I was re-

called again by the Sergeant.

Q What was the purpose of the Sergeant calling you?

A Apparently during the time that I was in the vehicle, the subject had made a statement to the Sergeant, what we were looking for was inside the rear of his vehicle.

Q At this point, this is when you went to the rear of the vehicle, or --

A He was placed in a patrol car at that time and then I went to the rear of his vehicle.

Q Going back to the search of the front portion of the automobile, first by way of foundation, I will ask you this, Officer --

How many times did you actually re-enter the vehicle?

A I actually entered the front portion of the vehicle three times.

Q On the second portion, please list

what you found -- I'm sorry -- on the second entry?

A Second entry -- on the second entry, I had looked over the back seat area and I observed a cake-type tin lying on the floorboard on the right side of the vehicle. I retrieved it at that time.

Q When you say retrieved, you removed it from the vehicle?

A Yes, I picked it up.

Q How many officers were present at this particular time?

A Two.

Q Still yourself and Sgt. Stoltz?

A Yes.

[17] Q Did other officers assist any time?

A Did other officers --

Q Excuse me. At any time prior to the completion of the search?

A No.

Q Other than what you have stated -- withdraw that. In the period when you

were following or observing and following the defendant's vehicle, did you note any movement toward the back seat?

A No, I didn't.

Q Did you notice any unusual movement at all? A No.

Q Whereabouts in the back seat was the tin?

A On the floorboard.

Q Exposed? A Yes.

Q Did you have occasion to open that tin? A Yes, I did.

Q Before going into that, could you describe the tin?

A The tin appeared to be a fruitcake type tin or candy tin with a painted scene on the outside, was red in color.

Q Could you see through it?

A No.

Q Did it appear to be disproportionately heavy when you picked it up?

A No, very light.

Q Very light. Could you hear any rattling in it?

A Yes.

[18] Q What did it sound like?

A BB's.

Q Did you open it to determine what these BB's were?

A Yes.

Q Did you find any BB's?

A No.

Q Find anything that looked like BB's?

A Seeds.

Q What else was in the tin, Officer?

A It was also a plastic baggie and containing a green vegetable matter, a flower -- with flower type buds and cigarette papers, two packs of cigarette papers.

Q In light of the previous events, did it surprise you at all to find what you found inside of the tin?

A Surprise? No.

Q When defendant stated, "What you

were looking for was in the back," was that the first comment that he had made?

A I couldn't say. I wasn't with him the entire time.

Q During the time that you were with defendant, did he engage in conversation with you?

A Yes.

Q Could you tell us the substance of that conversation?

A In essence, I believe he stated he was lost, he was looking for Interstate 5; he was trying to get to Los Angeles.

Q Was this prior to your approach of his vehicle?

A Yes.

Q In other words, this was still while you were on the roadway between your vehicles? [19] A Yes.

Q Now, after having smelled the odor of burning marijuana, did defendant engage in further conversation with you, with

you personally?

A I don't recall.

Q Officer, did you have occasion to radio in your stop on the patrol vehicle?

A At one point.

Q At the point of making your stop?

A No.

Q When is the first time that you radioed headquarters to advise --

A After finding the contraband in the rear of the vehicle.

Q I'm sorry, officer. Did I ask you the time of the stop?

A The time of the stop?

Q Yes.

A No, you didn't.

Q Well, what was the time of the stop?

A Approximately 1:45 a.m.

Q Approximately how long would you say the search process took from the time that you first detected the odor until the time you discovered the contraband

in the rear portion, approximately?

A I would estimate roughly maybe ten minutes, fifteen minutes.

Q When you exited your vehicle, Officer, how fast would you say you approached defendant vehicle?

A At a normal walk.

Q Did it appear that the defendant was -- was the defendant [20] approaching you faster than you were approaching him?

A Yes.

Q Did he appear to be nervous at that point?

THE COURT: Let me interrupt you. How long is this going to be. We have all our appeals on this afternoon. The judges are waiting.

MR. ROSS: Very well, Your Honor. I will try to move right along.

THE COURT: All right.

BY MR. ROSS:

Q Officer, did you say that defendant

had made no comment to you other than the first explanation of why -- of his being lost?

A I recall that comment only, yes.

Q You recall no further conversation whatsoever?

A Not at that time.

Q At any time?

A Subsequent to arrest, there was considerable conversation, yes.

Q When was the arrest in time?

A The exact time?

Q Roughly your best estimate?

A I would estimate probably around, in my mind, in my opinion, the arrest of the subject was after I smelled the burned odor of marijuana.

Q Now Officer, you prepared a police report; is that correct?

A That is right.

Q Do you have that with you?

[21] A Yes, I do.

Q At what point did you advise the defendant of his rights?

A He was advised of his rights approximately 0215 hours.

Q At what point in time was that with regard to the search?

A Approximately 30 minutes after the initial stop. I estimate probably -- probably ten minutes after the initial location of the contraband.

Q How long after defendant stated that, "What you're looking for is in the back"?

A He made that statement prior to being admonished of his rights.

Q That statement he did?

A Yes.

Q About how long before, would you say?

A Ten minutes, I would estimate.

Q Until that time then defendant had not been advised of his rights?

A No, he had not.

MR. ROSS: I have no further questions at this time, Your Honor.

THE COURT: Cross-examine.

DIRECT EXAMINATION

BY MR. ULDALL:

Q Officer DePue, what training have you had in identifying the odor of burned marijuana?

A I received training through the California Highway Patrol Academy in Sacramento. I received that particular type of training three times.

[22] Q Could you describe how this training was conducted, please?

A They conducted a course on visual and sense of smell, recognition of marijuana.

Q Has marijuana been burned in your presence?

A Yes, it has.

Q Then did you smell the odor this burned substance gives off?

A Yes, we do.

Q You have been with the C.H.P. how long? A In my eighth year.

Q How many times have you smelled what appeared to be the odor of burning marijuana on the job, approximately?

A I would estimate at least 50 times.

MR. ULDALL: That's all I have by way of cross, Your Honor.

THE COURT: All right.

MR. ROSS: Nothing further, Your Honor.

THE COURT: All right. You may step down, Officer.

THE WITNESS: Thank you.

THE COURT: Next witness?

MR. ROSS: Yes. May we call Sgt. Stoltz to the stand?

THE COURT: All right.

RICHARD STOLTZ,

having first been duly and regularly sworn to tell the truth, the whole truth and

nothing but the truth, testified as follows, to wit:

DIRECT EXAMINATION

BY MR. ROSS:

[23] Q Good afternoon, Sgt. Stoltz. You have been present in the courtroom while Officer DePue has testified; is that correct?

A Yes.

Q Did you hear the questions and his response? A Yes.

Q Is there anything that you would disagree with in Officer DePue's testimony?

A No.

Q Were Officer DePue's statements substantially the same as your own recollection would be? A Yes.

Q Now, Sgt. Stoltz, I believe, based upon Officer DePue's testimony, that you were present with the defendant while Officer DePue searched; is that correct?

A Yes.

Q And it was to you then that the de-

fendant made the comment, "What you're looking for is in the back." Is that correct? A Yes.

Q Now, you had not advised the defendant of his Miranda rights, had you?

A No.

Q Did you take part in any way in the search of the front portion of the vehicle?

A The only part that I could describe as taking any active part in was visually observing through the right front window as Officer DePue returned to the left front for the purpose of getting registration from the defendant, and at that time I did see the surgical type tweezers laying on the front seat, and [24] then I went around front of the car as the defendant opened the door and I also smelled the burning of marijuana.

Q Did you have occasion to see the tin in the back seat? A No.

Q You did not see that?

A No.

Q Were you present when Officer DePue opened the tin?

A Yes.

Q Do you recall at approximately what point in time that was from his retrieval of it from the car?

A To the best of my recollection, it was at the second entry. However, my primary concern at the time that the tin was discovered, as I remember, was the condition of the defendant, because he was down on his knees on the roadway vomiting and I was afraid that he may have ingested something that could conceivably be injurious to his health and safety.

Q I believe there was mentioned in preliminary hearing concerning defendant becoming ill. Defendant became ill; is that correct?

A Yes.

Q When he was -- after he had been positioned against the car?

A Yes.

Q Did you have occasion to observe the refuse after defendant did become ill?

A Yes.

Q I believe there was testimony about specks in the refuse; is that correct?

A I don't know what the specific description was, but there [25] wasn't very much.

Q Was a determination ever made?

A. No. That was never removed and analyzed.

Q Did you also have occasion to smell the vial, smell the liquid in the vial?

A Yes.

Q I take it, you concur that it was vial? A. Putrid.

MR. ROSS: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. ULDALL:

Q The defendant's statement, "What you're looking for is in the back," was that in response to a question by you or Officer DePue?

A No, no. No questions directed at the specific violation already being observed were asked -- in other words, no incriminating questions were asked of the defendant at this time.

MR. ULDALL: That's all I have, Your Honor.

THE COURT: All right.

MR. ROSS: Yes, Your Honor. I have merely a couple of other questions.

REDIRECT EXAMINATION

BY MR. ROSS:

Q Sergeant, do you recall any statement prior to that of defendant with regard to contraband in the car?

A Not with regard to contraband, no.

MR. ROSS: Thank you. No further

questions.

[26] MR. ULDALL: Nothing further.

THE COURT: All right. You may step down.

THE WITNESS: Thank you.

THE COURT: Anything else?

MR. ULDALL: No, I have nothing else, Your Honor.

MR. ROSS: Yes, Your Honor. I wonder, a procedural point, since the preliminary hearing transcript has been entered, I assume that the evidence will also be considered at this time for purposes of this proceeding.

MR. ULDALL: Yes, I would so move.

THE COURT: All right. It will be received.

MR. ULDALL: Under the same numbers they were marked at the preliminary hearing.

THE COURT: Anything else?

MR. ROSS: Yes, Your Honor. I

might inquire whether the vial of liquid is present. I don't believe that was introduced at the preliminary hearing. I never had an opportunity to examine it.

MR. ULDALL: The vial is present. The reason why it wasn't introduced at the preliminary was, we couldn't prove it was any narcotic controlled substance.

THE COURT: Your answer, you got to give it back, or whatever you are going to do. All right.

MR. ULDALL: Give it to him.

THE COURT: Do you have any further use for it?

MR. ULDALL: No, I have no further use for it.

THE COURT: Was it tested?

MR. ULDALL: Yes, it was tested. I have a copy of the [27] report. No narcotics, or --

THE COURT: Not concerned then.

MR. ULDALL: I would be willing

to submit the matter.

MR. ROSS: Yes, Your Honor, submitted. Will the Cout entertain argument at this point?

THE COURT: Argument?

MR. ROSS: Yes.

THE COURT: Sure.

MR. ROSS: Your Honor, based upon the testimony established in the preliminary hearing, together with the supplemental testimony presented today, we would ask that all evidence, all tangible evidence be suppressed.

THE COURT: Why?

MR. ROSS: I might point out, Your Honor, that according to the testimony, I think we obviously had, at least, a custodial interrogation, or custodial situation. By the Officer's testimony, defendant never was advised of his Miranda warnings, one of those warnings, of course, being that, "You have a right to

remain silent. Anything you say can and will be used against you," which I think is very, very important to the evidence now before us.

By the testimony, defendant had stated that, "What you're looking for is in the back."

THE COURT: That was not in response to any question.

MR. ROSS: Your Honor, without the initial warning, that "You have the right to remain silent," unless the defendant is advised that he has the right to remain silent --

THE COURT: He was not under arrest at the time.

[28] MR. ROSS: I believe, Your Honor, that the testimony of Officer DePue establishes that defendant was under arrest at the time of being placed against the car.

THE COURT: Wait a minute. Are you saying that the Officer omitted giving

him that portion of the Miranda rights? We all understand that is your point, that he didn't tell the defendant that he had a right to remain silent.

MR. ROSS: That is correct, Your Honor.

THE COURT: Where is the evidence then?

MR. ROSS: No, the defendant, Your Honor -- I might point out that Officer DePue stated that the arrest occurred at approximately 1:45 and that the Miranda warnings were given approximately one half hour later.

THE COURT: He said, "1:45, about." That is his opinion, it was about that time.

MR. ROSS: Well, there is some evidence, however, that we have before us with regard to time.

THE COURT: Let's reconstruct it for a minute. Now, you don't deny that

this was a legal stop, do you? He observed the man violating the Vehicle Code Provision, on the wrong side of the road, driving 30 miles an hour in a 50 mile an hour zone, and he sees him twice, sees him over the road weaving twice. Certainly have the right to stop him. They stop him. He stumbles out of the car. He comes back, and at 1:45 in the morning, as any experienced officer will tell you, that is something to alert him. Nothing has happened at that point.

MR. ROSS: Might I respond to this point so far?

THE COURT: Yes.

[29] MR. ROSS: We also have established through the testimony that the visibility that night was approximately a quarter of a mile. The preliminary hearing transcript, Officer DePue stated that, "Defendant's vehicle was approximately a quarter of a mile away." Therefore, at the fringe of

visibility.

THE COURT: That is something for the jury to determine, isn't it?

MR. ROSS: I am merely resonstructing what the Court pointed out. The other consideration, next when the vehicle was pulled over, I believe the only testimony was that there were two instances of going over the divider line in a fog. Once having stopped, defendant did state an explanation; in other words, there was no further conduct. With regard to the jumping out of the vehicle, I think it has been firmly established, at least from the testimony of the preliminary hearing transcript, that Officer DePue met defendant half way, so that if defendant jumped out, they must have been traveling at the same speed to reach the point in the middle. I would suggest to the Court that this should not be persuasive with regard to any establishment of prob-

able cause, the exiting of the vehicle. We have to at least assume that the officer exited his vehicle in a normal manner, and in light of the testimony, we might conclude that defendant also exited, at least in a normal type fashion.

With regard to speed and the description --

THE COURT: The testimony here, Officer DePue kept him in sight at all times at a slow rate of speed that he estimated, 30 miles an hour.

[30] MR. ROSS: Which is not -- would not -- would not seem to be a factor, at least, Your Honor, establishing probable cause on a foggy evening. As a matter or fact, it would seem quite reasonable for a driver to drive slower on a foggy night. It might actually be -- it might be very unreasonable for a party to drive at 50 miles an hour through a fog when he is lost, which was the testimony of the

statement --

THE COURT: I can understand your point, but for purposes of passing upon reasonable and probable cause, this Officer has been on the force eight years. It is his sworn duty to get out and patrol the highway. When he says he gets the man in sight at all times, is as far as I can go. I can't weigh that. You might say -- you are saying "foggy." You are asking me to make a decision now, to weigh the evidence. I can't do that on this kind of a hearing.

MR. ROSS: Your Honor, we are in a suppression hearing.

THE COURT: That is right.

MR. ROSS: The Court is also the finder of fact, as well.

THE COURT: We have no evidence to the contrary. You are asking me to -- you are describing it, "foggy." How do you know? Did you see him?

MR. ROSS: By the testimony of the Officer. Actually, the point is that -- that we actually do not have to consider or even reach that point. That it would appear that since defendant was taken into custody upon the detection of the odor, he was taken in custody, that his Mrianda rights would attach at that time, and unless he had been advised of his right to [31] remain silent -- if I might construct it this way, Your Honor -- the bulk of the contraband was found in the rear portion of the car. Prior to it being found, defendant stated, "What you're looking for is in the rear of the car." The officers testified that they then, after that statement, went and looked in the rear portion. The preliminary transcript goes through the exact procedure, prior to that time, between the time of that statement and the time -- between the time of being taken into

custody and that statement, defendant had not been advised of his Miranda warnings. I think the Court can take judicial notice that the normal procedure, of course, is to advise of the Miranda rights.

THE COURT: Let me get you straight. The minute that the door was opened, the officers smelled the burning marijuana, they had a duty right there and then to advise, give him his Miranda rights; is that right?

MR. ROSS: No, that is not it. The duty attaches, not upon the detection of the odor, the duty attached when defendant was spun around, placed against the car and taken into custody. Now, if the Court has trouble at that point, I think defendant was handcuffed prior to the statement. That is certainly a custody. You dan't get too much more into custody than being handcuffed and placed in a patrol vehicle. The point, it would

seem, is that the attachment of the Miranda rights would come -- would be when defendant spun around, placed up against the car. That is custody, a restraint of physical freedom, which actually, technically is the pont of arrest, any restraint of physical freedom, whether it be arrest for interrogation or [32] arrest for a crime. That is an arrest at that point, is when the duty would attach, the crucial part being that the duty or the right to remain silent, which is, of course, the first, I believe, always the first stated of the Miranda rights.

THE COURT: Under Terry vs. Ohio, 1:45 in the morning --

MR. ROSS: I'm not sure if I am showing the Court --

THE COURT: Let me ask you; what is your position about what point must they give the Miranda rights under the circumstances of this case, that we have

in evidence so far?

MR. ROSS: Under the circumstances, the Miranda rights attached when there are factual situations zeroing into a particular person. At this time it would appear that -- I'm sorry, Your Honor -- I forgot the last question the Court --

THE COURT: Take your time.

MR. ROSS: What was the question again?

THE COURT: Gee, I don't remember. Start over.

MR. ROSS: All right. Let's go back to the beginning. The point -- oh, I know -- it was when you were asking, Your Honor, when that right attached.

THE COURT: Yes.

MR. ROSS: My response was that the rights attach when the factual situation is such that the officers are looking toward the individual, in this case, the defendant, as a potential defendant for a

crime; in other words, it is not the situation, it is not the application, say, of Terry v. Ohio, where the -- where the questioning begins in more of a general sort.

If I might give an example, I think I can make the [33] point better by example. Your Honor, for instance, if I were walking down the street outside this courtroom and an officer came over and he started asking me questions, he said, "Did you see a car go by? Where are you coming from? Where are you going?" I would be responding.

I would say, "Well, I'm going to my vehicle. I'm going to my car to go home. I just came from the courthouse." No doubt at this point for the officer to advise or to give me the Miranda warnings, because at that point he would be looking toward me as a potential defendant. He would be in the area of in general

investigation. However, that is not our case here. Our case here is, we have an element of probable cause, when the car door is opened, the smell of burned marijuana.

THE COURT: If you are trying to indicate what happened here, we have the man jumping out, being asked for his driver's license, registration card. He goes back to the door, opens his door. Officer DePue is three or four feet behind him. Here comes a cloud of marijuana smoke.

MR. ROSS: Well, I don't know how big a cloud it was.

THE COURT: He remembers his days at the academy. He says, "That is marijuana."

MR. ROSS: We have no problem with that; in other words, if the Court -- I don't mean to imply that the duty to advise Miranda attached when they met mid-

way and he said, "Can I see your driver's license." Actually, I never really gave that much thought, but we are concerned with our facts now before us. It is more than a hypothetical. There was an element of probable cause, after all of that initial driver's license, etc, [34] and when the door was opened, the cloud of marijuana comes out. Now, that would be reason for the officer to zero in on the defendant, specifically.

THE COURT: Let me ask you a question. Keep your thought.

MR. ROSS: Yes, sir.

THE COURT: Was this a legal stop? Remember, talking about fog and all that, for purposes here of the 995 Motion, reasonable cause? The Magistrate has said there was reasonable cause. He heard the testimony.

MR. ROSS: For the search, yes.

THE COURT: I take judicial notice

of that road there. Every part he has talked about, I know that road very well up there.

MR. ROSS: Is the Court asking me for black letter law, or my thoughts?

THE COURT: Just under the circumstances of this case, was that a legal stop, to start with? Maybe we had better put it this way. I think it was. So now --

MR. ROSS: Of course, Your Honor, when you ask a question like that, I am defense counsel, so I am thinking. Assume that it was a legal stop. For purposes of argument here, I am quite willing to assume that it was a legal stop. That is not the point that I am having difficulty with. I am having difficulty from the cloud of marijuana, from that point of the opening of the door, detection of the odor of marijuana and the failure to advise Miranda at that point, and then,

referring to the more or less standard type arrest search procedure --

THE COURT: Do this; we got a man champing at the bit. [35] What is your position?

MR. ULDALL: First of all, Your Honor, I see no problem with the stop. It was a legal stop.

Secondly, as far as Miranda, even if I conceded the defendant was in custody when he made the statement, which he was, it was a completely voluntary statement. Sgt. Stoltz testified the statement, "What you're looking for is in the back," was not in response to any question put to him by Sgt. Stoltz or by Officer DePue. Assume that response, or the statement was in response to a question, after Officer DePue had made that initial observation, the smell of marijuana, the tweezers on the seat, tweezers with a marijuana cigarette on the dashboard, the cigarette

on the left floorboard, the tin with marijuana seeds and the bag of marijuana, he had the right to keep on searching anyway. Knowing Officer DePue, he would search. He's like a gopher out there.

THE COURT: No wonder the defendant was sick. He just had -- he had a marijuana cigarette in each hand, looked like.

MR. ULDALL: Even assuming the statement would not have been made, he still had the right to keep on searching.

THE COURT: I shouldn't have said that. That sounds like a flip statement. I don't mean that. This is a serious matter. Anything else?

MR. ULDALL: I will point out, this vehicle involved, as the Court is aware, was a station wagon.

MR. ROSS: I think I can see what Mr. Uldall is driving at. This was a station wagon, or without a trunk, etc.

However, I don't think we have to reach that. It may help the Court to [36] point out, that although I can't read the date here, my memory is a little foggy, I remember the case came out in the last couple of months, People vs. Parker, with regard to a murder conviction, a little more serious than this offense, and it is very interesting that part of the language reads, "That the burden is upon the prosecution to establish that a confession obtained after Miranda rights had been asserted by the suspect as a result of change of mind, prompted by the advise of counsel, his own psychological makeup, or similar situation."

There are two points there. The first, we are not actually dealing -- we are dealing, in a sense, with a confession, at least an adverse statement. Now, it seems to follow that the rights must be given, if that is the status of the

law, at least the rights must first be given, and I think the case -- I think we have a lot of case law, at least, that would point in that direction, if not hit it right on the nose. It would seem the facts establish that if Miranda has never been given, because a defendant cannot waive a right that he is unaware of, and it is clear that the prosecution does have a burden of establishing that the defendant did knowingly waive his Miranda rights. Of course, we could never reach that point if the prosecution has never established that the rights were given in the first place. So that it would appear that the search, at least of the rear, was tainted by the circumstances that gave rise to the defendant's statement that led him there.

THE COURT: Let me suggest this; I got the picture now. Unless there is something you really want to urge -- I

got my mind made up. Anything else?

[37] MR. ULDALL: No, submitted.

THE COURT: Anything else?

MR. ROSS: No, submitted, Your Honor.

THE COURT: All right. I have to take the position that this was a voluntary statement, under the circumstances. I hear these all the time up here. I am going to have to deny the motion.

Good fight, Counsel.

MR. ROSS: Very well, Your Honor.

THE COURT: Very well.

MR. ROSS: Where do we stand?

MR. ULDALL: Just to affirm the April 22nd trial date.

THE COURT: All right. Good luck.

MR. ULDALL: I would ask it be stipulated that all evidence can be returned to Officer DePue for safe-keeping.

MR. ROSS: Very will, Your Honor.

THE COURT: All right. That is

the order.

You are Mr. Ross?

MR. ROSS: William Ross, R-o-s-s.

THE COURT: Come again.

MR. ROSS: Thank you.

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